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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,836	01/07/2002	Marshall O. Townsend II	GLFP-1-1001	4549
25315	7590	06/01/2005	EXAMINER	
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104			LEGESSE, NINI F	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/041,836

Applicant(s)

TOWNSEND, MARSHALL O.

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,9-13,20-22 and 25-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,4-6,9-11,13,20-22 and 25-28 is/are rejected.  
7) ☒ Claim(s) 12 and 29-31 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

**Applicant's response to the office action of 11/17/04 is acknowledged on 02/22/05.**

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 4-6, 10, 11, 13, 20, 21, and 25-28 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Baxstrom (US Patent No. 4,915,387).

**Regarding claim 1**, Baxstrom teaches a template (22) having a top and bottom and a graphic design (see figures 1-3) attached to the template. The graphic design depicting a "plurality of club path indicators" (34), a "swing reference guide" (RF, FR2A, RF2B, LF, LF2; see column 4, lines 1+), and a "link" (see column 4, lines 59-64 and column 7, lines 4-12). Regarding the swing reference guide, in as much set forth by applicant in the claim, this guide clearly establishes "shot" selection types. Club selection is synonymous with "shot selection." For example, if a low loft shot is needed, a low number iron is used, such as a 3 iron. If a high loft shot is need, a high number iron is used, such as a 9 iron. In the alternative, see elements 30 and/or 32 that may also be considered a "swing reference guide" which define a plurality of shot selection types. For a regular loft shot, a golfer would place the golf ball relative to element 30. For a

Art Unit: 3711

lower loft shot, the golfer would place the golf ball relative to element 32 (see column 4, lines 31+; see also column 7, lines 50-52). It can be argued that Baxstorm does not disclose the specific arrangement and/or content of indicia (printed matter) set forth in the claim. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any type of graphic design as a swing reference guide since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of swing reference guide does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. reference guide and the substrate e.g. template/mat which is required for patentability.

**Regarding claim 4**, reference characters 34 clearly denote a "primary" club path.

**Regarding claims 5 and 6**, element 30 is a club face angle indicator (see column 7, lines 17+).

**Regarding claim 10**, in as much structure set forth by applicant in the claim, any of the corners of the template may be grabbed to allow an individual to move/carry the template, thereby inherently defining a "handle."

**Regarding claim 11**, see lead lines 44.

**Regarding claim 13**, see discussion above.

**Regarding claim 20**, the design is attached to the top.

**Regarding claim 21**, the design is attached to the bottom when the device is flipped (see MPEP 2112).

**Regarding claims 25 and 26**, see column 7, lines 8+.

**Regarding claim 27**, see column 4, lines 59+ as well as the remainder of the reference.

**Regarding claim 28**, see lead lines 38.

Alternatively, each of the above claims is rejected with Baxstrom in view of Gibbs et al. (US Patent No. 1,484,390).

Gibbs discloses an instruction chart for playing golf comprising: a template (see Fig. 2), the template having a top and a bottom, a graphic design attached to the template, the graphic design depicting a swing reference guide comprising a plurality of shot selection types (here a "brassie" shot, see Fig. 1 for a drive, Fig. 3 for a "mid-iron" etc); a link between each one of the plurality of shot selection types and one of the club path indicators (11, all the instructions that are shown on the template could be considered as links); and a foot (for example 2 and 3) and ball position indicator (7). It is obvious to employ Gibbs to provide further instructions of performing a specific shot. In so doing, the instructions would be coded as is already suggested in the Baxstrom reference. It can be argued that Baxstrom does not disclose the specific arrangement and/or content of indicia (printed matter) set forth in the claim. However, it would have been obvious to

Art Unit: 3711

one having ordinary skill in the art at the time the invention was made to provide any type of graphic design as a swing reference guide since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of swing reference guide does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. reference guide and the substrate e.g. template/mat which is required for patentability.

**Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Baxstrom alone or as modified by Gibbs et al., in view of Long (Us Patent No. 5,273,285).

Baxstrom fails to disclose the use of an ultraviolet protective layer in his device. On the other hand, Long discloses the use of an ultraviolet protective layer in his device (see column 3 lines 65-68). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Baxstrom device with an ultraviolet protective layer as taught by Long in order to prolong the life of the device by protecting it from sun damage.

**Claim 22** is rejected under 35 U.S.C. 103(a) as being unpatentable over Baxstrom alone or as modified by Gibbs et al., in view of Florian (US Patent No. 6,156,396).

Baxstrom fails to disclose a laminated template. On the other hand, Florian teaches a laminated golf practice mat (see column 2 lines 1-3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to laminate the Baxstrom device as taught by Florian in order to provide an anti-friction layer that is durable.

#### ***Allowable Subject Matter***

**Claims 12, 29, 30, and 31** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 4-6, 9-13, 20-22, and 25-31 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3711

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (571) 272-4412. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571) 272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NFL

05/26/05

  
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SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700